

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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689 EATERY CORP., etc., *et ano.*, :
Plaintiffs, :

- against -

Civil Action No.
02 CV 4431 (LJL)

THE CITY OF NEW YORK, et al., :
Defendants.. :

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59 MURRAY ENTERPRISES INC., etc., *et al.*, :
Plaintiffs, :

- against -

Civil Action No.
02 CV 4432 (LJL)

THE CITY OF NEW YORK, et al., :
Defendants. :

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CLUB AT 60TH STREET, INC., etc., *et al.*, :
Plaintiffs, :

- against -

Civil Action No.
02 CV 8333 (LJL)

THE CITY OF NEW YORK, :
Defendant. :

-----X

336 LLC., etc., *et al.*, :
Plaintiffs, :

- against -

Civil Action No.
18 CV 3732 (LJL)

THE CITY OF NEW YORK, *et al.*, :
Defendants. :

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**OMNIBUS STIPULATION AND ORDER PROVIDING FOR THE RE-FILING
OF
SUBSEQUENTLY CORRECTED DECLARATIONS AND MEMORANDA, ETC.**

WHEREAS, on September 16, 2022, plaintiffs moved for partial summary judgment (“Plaintiffs’ Motions for Partial Summary Judgment”) and defendants moved for summary judgment (“Defendants’ Motions for Summary Judgment”); and

WHEREAS, on March 27, 2023, plaintiffs’ cross-moved for summary judgment (“Plaintiffs’ Cross-Motions for Summary Judgment”); and

WHEREAS, Plaintiffs’ Motions for Partial Summary Judgment, Defendants’ Motions for Summary Judgment, and Plaintiffs’ Cross-Motions for Summary Judgment are hereinafter referred to as “the Motions”; and

WHEREAS, the Motions were based on various Stipulations of Fact, Declarations, supporting Exhibits, and Memoranda of Law, all previously filed in these actions; and

WHEREAS, by Order dated May 2, 2023, the Court denied the Motions without prejudice to renewal and, *inter alia*, directed that proposed Consolidated Statement of Stipulated Facts be filed by May 19, 2023, and that the parties re-file the Motions by May 26, 2023 (the “Renewed Motions”); and

WHEREAS, by Order dated May 8, 2023, the Court clarified the Order of May 2, 2023, to provide, *inter alia*, that the parties may designate by May 19, 2023, the prior declarations previously submitted in motion practice in these actions that are intended to be submitted as direct testimony at the trial on the merits; and

WHEREAS, certain of the factual statements set forth in the prior declarations and memoranda of law in support of the Motions have been corrected by subsequent filings, or will be corrected by the Consolidated Statement of Stipulated Facts; and

WHEREAS, prior briefing by the parties has referenced various stipulated facts stated in the Second Supplemental Statement of Facts filed in all four actions on January 19, 2023, and

WHEREAS, in order to prevent the need for a time-consuming new round of sequential briefing, the parties had agreed that all prior briefing would be refiled without textual changes, so there is a need, in creating the Consolidated Statement of Facts, to *not* delete any of the facts previously stated in the Second Supplemental Statement of Facts but, instead, to simply add any *new* facts and, to the extent they conflict with or modify any of the prior statements of facts, they should expressly so state, and

WHEREAS, in order to comply with the schedule directed by the Court and avoid further delays it is necessary for the parties to file the Renewed Motions with new titles and dates, and cross-references to the Consolidated Statement of Stipulated Facts, but without any other changes in the content thereof; and

WHEREAS the parties have agreed that all the new facts on alternative sites which Defendant will be introducing in the Consolidated Statement of Stipulated Facts shall also be supported by one or more declarations; and

WHEREAS the parties have introduced several exhibits in their previously filed Joint Request for Judicial Notice, most of which they are relying on in their respective summary judgment motions; and

WHEREAS, in the Consolidated Statement of Stipulated Facts, some facts, are preceded by the statement that a party “contends,” whereas some others are either without

such a disclaimer or are preceded by the words “it is uncontroverted that,” and the parties wish to clarify the difference intended by the different terminologies,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. The prior declarations designated as trial declarations (in lieu of direct testimony), due May 19, 2023, and the Renewed Motions, due May 26, 2023, shall be treated as if they were filed on the dates the original versions were filed, i.e., based on the facts and circumstances known to counsel and the parties as of the original dates thereof.

2. The parties waive any right they may otherwise have to seek sanctions for the designation of a trial declaration or the filing of a Renewed Motion reciting facts which have subsequently been corrected of record.

3. To the extent the parties add any new facts to the Consolidated Statement of Stipulated Facts which conflict with any of the facts contained in the parties’ Second Supplemental Joint Statement of Facts, rather than deleting the prior statements, the prior statements shall remain unchanged in the Consolidated Statement of Stipulated Facts but a new section, at the end of the Consolidated Statement of Facts, will list all the new such facts prefaced by a statement that to the extent they conflict with designated earlier paragraphs in the Consolidated Statement of Stipulated Facts, they shall expressly state that they supersede those earlier paragraph numbers.

4. To the extent any facts are put into the Consolidated Statement of Stipulated Facts preceded by the indication that a party “contends” that such fact is true, such inclusion

is not stipulated but subject to cross-examination at trial of whatever declarant the proponent of that statement offers to support the contended fact. With respect to all facts included in the Consolidated Statement of Stipulated Facts not preceded by the indication that a party “contends,” including those preceded by the words “it is uncontroverted,” the parties waive the right to cross-examine on such statement and accept it for purposes of both summary judgment and trial.

5. The exhibits in the parties’ Joint Request for Judicial Notice filed in all four actions on May 9, 2022, are accepted as accurate and adequate copies of what they purport to be and are deemed in evidence for purposes of trial.

6. All new facts in the Consolidated Statement of Stipulated Facts on the issue of alternative sites shall be supported by the declaration of a witness who can be cross-examined at trial, if necessary, subject to paragraph 4, above.

7. Facsimile/electronic signatures of this Stipulation shall be deemed original for all purposes.

Dated: May 12, 2023

Respectfully submitted,

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IT IS SO ORDERED



United States District Judge

Dated May 15, 2023